

DECISION



Mr. Lever
1996
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205210

DATE: November 4, 1981

MATTER OF: Mission Hardwood Company

DIGEST:

Protest concerning alleged solicitation defects is untimely because although it was filed with agency prior to bid opening, it was filed with GAO more than 10 working days after agency denied protest.

Mission Hardwood Company protests the proposed award of a contract to Bruce Floors, Inc. under Invitation for Bids (IFB) No. F02601-81-B0110 issued by the Department of the Air Force. Mission maintains that the IFB was ambiguous and therefore any award under the IFB would be improper. For the reasons given below, we dismiss the protest as untimely.

The IFB solicited bids on repairing and resurfacing a gym floor at the Davis-Monthan Air Force Base in Arizona. Bid opening was scheduled for September 15. On September 15, prior to the opening of bids, the protester received verbal instructions from the project engineer which, in the protester's opinion, substantially changed the nature and scope of the IFB. Accordingly, Mission requested that bid opening be postponed and a written clarification issued. This request was denied by the contracting officer.

Thereafter, Mission sent a telegram to the contracting officer protesting the opening of bids. The protester was orally advised by the contracting officer that its protest was denied, and bids were opened as scheduled. Later that day, Mission sent another telegram protesting any award under the IFB. The following day, on September 16, Mission sent a letter confirming its protest and outlining the basis of its protest further.

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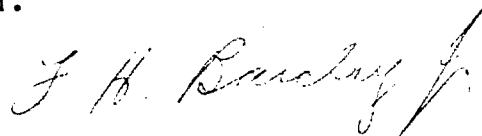
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Subsequently, by a letter dated September 30, and received by Mission on October 2, the Air Force denied Mission's protest of any award under the IFB. The protester then filed its protest with our Office on October 16.

Our Bid Protest Procedures require that protests based upon alleged improprieties in a solicitation be filed with either the contracting agency or our Office prior to bid opening. 4 C.F.R. § 21.2(b) (1981). Our procedures further provide that where a protest has been initially filed with the contracting agency, any subsequent protest to our Office must be made within 10 working days of actual or constructive notice of initial adverse agency action. 4 C.F.R. § 21.2(a). Here, Mission filed a protest with the contracting agency prior to bid opening and therefore its protest regarding the IFB was timely; however, its subsequent protest to our Office was not filed within 10 working days of initial adverse agency action. In this connection, Mission was advised on September 15 that its protest regarding the IFB was denied. Additionally, the opening of bids as scheduled without taking corrective action also constituted adverse agency action. W.B. Dickey Co., B-199224, July 15, 1980 80-2 CPD 30.

The fact that Mission filed another protest with the agency concerning the award of any contract is of no consequence. The second protest merely restated the same allegation as contained in its initial protest: that the IFB was ambiguous. Thus, the protester was required to file its protest with our Office within 10 working days of when the agency denied its initial protest. U.S. Financial Services, Inc.-- Request for Reconsideration, B-197859, October 8, 1980, 80-2 CPD 254. As Mission did not file its protest with our Office until October 16, its protest is untimely.

The protest is dismissed.



For Harry R. Van Cleve
Acting General Counsel